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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

KEITH PATTERSON, individually, and
on behalf of all others similarly situated,

Plaintiffs,

vs.

RW DIRECT, INC., POSITEC USA,
INC.; and DOES 1 to 50, inclusive,

Defendants.

CASE NO. 3:18-cv-00055

The Hon. Vince Chhabria

**JOINT REQUEST FOR DISMISSAL
PER RULE 23(e); [PROPOSED]
ORDER**

(Filed concurrently with Declaration of
Joana Fang)

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WHEREAS, class counsel is unaware of the identities of any putative class members and therefore, cannot notify the unnamed class members of the dismissal

1 if required to do so (Dec of JF, ¶5);

2 WHEREAS, class counsel is not aware of any danger that absent class
3 members will be prejudiced by a “rapidly approaching statute of limitations.” The
4 filing of a class action on both federal and state law claims tolls the applicable
5 statute of limitations for members of the putative class (*See Am. Pipe & Constr. Co.*
6 *v. Utah*, 414 U.S. 538, 553-554 (1974)) (Dec of JF, ¶6);

7 WHEREAS, the interests of putative class members are not being
8 compromised by Plaintiff’s individual settlement as it was reached after testing
9 conducted on Plaintiff’s WORX mower by Plaintiff’s expert did not substantiate the
10 alleged defect claims (Dec of JF, ¶7); and

11 WHEREAS, the parties have agreed to the dismissal of this action on the
12 following terms (i) dismissal of Plaintiff’s individual claims with prejudice, (ii)
13 dismissal of the putative class claims without prejudice to class members, and (iii)
14 for Plaintiff and Defendant to each bear their respective attorney’s fees and costs of
15 suit (Dec of JF, ¶8).

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18 Dated: October 22, 2019

Respectfully submitted,

19 **KABATECK LLP**

20 By: /s/ Joana Fang
21 *Counsel for Plaintiff and the*
22 *Proposed Class*

23 Dated: October 22, 2019

Respectfully submitted,

24 **NELSON MULLINS RILEY**
25 **& SCARBOROUGH, LLP**

26 By: /s/ William H. Latham
27 *Counsel for Defendants*
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1 **[PROPOSED] ORDER**

2 The foregoing Joint Request for Dismissal of the parties is accepted and
3 approved, and this action is hereby dismissed on the following terms (i) dismissal
4 of Plaintiff's individual claims with prejudice, (ii) dismissal of the putative class
5 claims without prejudice to class members, and (iii) for Plaintiff and Defendant to
6 each bear their respective attorney's fees and costs of suit.

7
8 **IT IS SO ORDERED.**

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11 Dated: October 23, 2019


12 The Hon. Vince Chhabria